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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,347	06/28/2006	Francois Girard	P29468	5450
7055	7590	07/23/2008	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				COLLADO, CYNTHIA FRANCISCA
ART UNIT		PAPER NUMBER		
3618				
NOTIFICATION DATE			DELIVERY MODE	
07/23/2008			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/570,347	GIRARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CYNTHIA F. COLLADO	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 April 2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 8-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 8-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>4/14/2008</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

Applicant submitted an amendment dated April 14 2008, wherein claims 1-7 were canceled, 8, 9 and 15 were amended. New claims 17-24 were added.

### ***Claim Objections***

Claim 16 is objected to because of the following informalities: There is no antecedent basis for “lower gliding surface” There appears to be double inclusion of “an upper surface” Examiner is unclear whether “upper support surface” and “upper surface” of claim 8 are different than “upper surface” of claim 16. Appropriate correction is required.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 02/49728 A1 (WO 728).

Regarding claim 8, regarding the cross country ski, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be

employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

WO 728 discloses a ski comprising a central zone adapted to receive a device for binding a boot to the ski (fig 3, element 3), the central zone of the ski comprising a binding zone having a location for receiving the binding device and an upper support surface of the ski (figs 5-7), the upper support surface of the ski being arranged on a least one of two lateral sides (elevated central area 3 in figs 5-7) of the location to receive the binding device, the upper support surface being capable of coming in direct contact with the boot when a skier using the cross-country ski system exerts a pressure force (fig 6, element 5' and 5"), the location for receiving the binding device comprises an upwardly facing recess of the upper surface of the ski (7,7',7", page 11, lines 15-16).

Regarding claim 9, WO 728 discloses the central zone of the ski, at least one lateral shoulder arranged on one of the two lateral sides of the location for receiving the binding device such that the boot can be supported directly on the shoulder (fig 6, element 7' and 7").

Regarding claim 10, WO 728 discloses the ski comprises two lateral upper surfaces arranged on respective lateral sides of the location for receiving the binding device (fig 6, element 7' and 7").

Regarding claim 11, WO 728 discloses the shoulder comprises a support surface for the

boot arranged above the upper surface of the location for receiving the binding device (fig 6, elements 7' and 7").

Regarding claim 12, WO 728 discloses the upper support surface of the ski is longitudinally arranged in an area corresponding to a metatarsophalangeal bending zone of a user's foot (fig 6, elements 7' and 7").

Regarding claim 13, WO 728 discloses a binding device adapted to be fixed on the ski in the location for receiving the binding device (fig 6, element 42' and 42").

Regarding claim 14, WO 728 discloses the binding device has, at least in the area of the support surface, a lesser width than a width of the ski (fig 6, element 42' and 42").

Regarding claim 16, WO 728 discloses the ski has, at least in part of the central zone, an upper surface, the transverse width of said upper surface being greater than a width of the lower gliding surface of the ski (WO, fig 6, elements 3, 5', 5", and 42' and 42").

Fig 7, clearly shows three distinct regions, the width of raised portion 3 has a transverse width e.g. depth which is greater than the transverse width of the glide surface.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/49728 in view of Haughlin (US Patent No.5, 664,797).

Regarding claim 15, WO discloses the binding device is adapted to be fitted within the recess of the upper surface of the ski (WO, fig 6), the binding device including no base plate to be mounted upon the ski, so that a lower external surface of the boot is adapted to be directly supported on the upper support surface of the ski (WO 728, fig 6, element 5' and 7'). WO 728 is silent as to the specifics of the binding device, but states that it is known to substitute ski bindings and ski boots to a more safe binding (pg 3, ln 22-24,pg 4, ln 5.pg 7 2<sup>nd</sup> full paragraph). Haughlin discloses the binding device having a rib adapted to be positioned within a downwardly facing longitudinal recess in a sole of the boot (fig 15, element 66). It would have been obvious to one of ordinary skill in the art to use bindings with the ski of WO 728 having ribs adapted to position in grooves like that taught by Haughlin (col 8, lns 10-15). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Regarding claim 17, the combination of WO 728 and Haughlin discloses the binding device includes a front jaw adapted to engage a front bar of the boot for enabling articulation of the boot with respect to the ski (Haughlin,fig 15,element 49), the binding device includes an elastic return mechanism, said elastic return mechanism being rearwardly spaced from the front jaw and being adapted to engage a rear bar of the boot for applying an elastic return force to the rear bar (Haughlin,fig 15,element 48) also (Haughlin,col 8,lines 1-23).

Regarding claim 18, the modified WO 728 ski and binding discloses the binding device is adapted to be affixed to the ski by being positioned within the recess of the upper surface of the ski (WO 728,fig 6,element 5'), the binding device has a rib adapted to be positioned within a downwardly facing longitudinal recess in a sole of the boot (Haughlin, fig 15, element 66), the binding device includes no base plate that would prevent a lower external surface of the boot from direct supporting engagement on the upper support surface of the ski (WO 728,fig 6, elements 7' and 7").

Regarding claim 19, WO 728 discloses a boot having a support surface adapted to be supported directly by said upper support surface of the ski (fig 6, element 42').

Regarding claim 20, WO 728 discloses a support surface of the boot is a metatarsophalangeal bending zone of the boot (fig 6, element 7' and 7"). Haughlin also shows boot 12 and discusses toe joints in col 10, lines 50-53.

Regarding claims 16 and 21, Haughlin teaches embodiments fig 1-4 where the binding has 2 lateral supporting surfaces 64 that project beyond the upper surface 46 of the ski

body 32 to enable precise guidance of the ski and maximal force transmission to the ski body 32, particular during skating (col 8, lines 1-10). It would have been obvious to one of ordinary skill in the art to modify the alpine ski of WO 728 to have a transverse width that is greater than the gliding surface width as taught by Haughlin for the reason set forth therein. While Haughlin teaches the binding having the increase width it would have been obvious to increase the width of the ski of WO 728 since the binding is embedded in the ski and therefore the result would be the same whether the ski was able to accommodate the binding or widened to allow precise guidance when skating.

Regarding claim 22, the combination of WO 278 and Haughlin discloses the binding device includes no base plate that would prevent a lower external surface of the boot from direct supporting engagement on the upper support surfaces of the ski (WO 278, fig 6, element 5').

Regarding claim 23, the combination of WO 278 and Haughlin discloses the binding device includes a front jaw (Haughlin, fig 15, element 48, 49) adapted to engage a front bar of the boot for enabling articulation of the boot with respect to the ski the binding device includes an elastic return mechanism (Haughlin, fig 15, elements 48, 49), the elastic return mechanism being rearwardly spaced from the front jaw and being adapted to engage a rear bar of the boot for applying an elastic return force to the rear bar.

Regarding claim 24, the combination of WO 278 and Haughlin discloses a boot having support surfaces adapted to be supported directly by the upper support surfaces of the

ski (WO 278, fig 6, elements 5' and 5"), the boot having the front and rear bars (Haughlin, fig 5).

***Response to Arguments***

Regarding applicants arguments filed on April 14<sup>th</sup>, 2008, with respect to claims 8, 9 and 15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CYNTHIA F. COLLADO whose telephone number is (571)272-8315. The examiner can normally be reached on mon-fri 6-2.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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